

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT WILLETT,

Plaintiff-Appellant,

and

JACKIE DA PRA and ALISA WEAVER,

Plaintiffs,

v

WATERFORD CHARTER TOWNSHIP,

Defendant-Appellee.

FOR PUBLICATION

May 2, 200

9:10 a.m.

No. 265264

Oakland Circuit Court

LC No. 04-062478-CZ

Official Reported Version

Before: Donofrio, P.J., and Murphy and Kelly, JJ.

MURPHY, J. (*concurring in the result only*).

Because I disagree with the analytic framework utilized by the majority, I write separately to express my view regarding governmental immunity under MCL 691.1417.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Kreiner v Fischer*, 471 Mich 109, 129; 683 NW2d 611 (2004). An issue posing a question of statutory construction is likewise reviewed de novo. *Id.* Moreover, the applicability of governmental immunity is a question of law that this Court reviews de novo. *Pierce v City of Lansing*, 265 Mich App 174, 176; 694 NW2d 65 (2005).

Our primary task in construing a statute is to discern and give effect to the intent of our Legislature. *Shinholster v Annapolis Hosp*, 471 Mich 540, 548-549; 685 NW2d 275 (2004). The words contained in a statute provide us with the most reliable evidence of the Legislature's intent, and this Court must give meaning to every word, phrase, and clause in the statute. *Id.* at 549. We must consider the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme. *Id.* Where the wording or language of a statute is unambiguous, the Legislature is deemed to have intended the meaning clearly expressed, and the statute must be enforced as written. *Id.* "A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the

Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). The Michigan Supreme Court has reiterated often and clearly that the courts of this state may read nothing into an unambiguous statute. See, e.g., *Halloran v Bhan*, 470 Mich 572, 577; 683 NW2d 129 (2004); *Neal v Wilkes*, 470 Mich 661, 670 n 13; 685 NW2d 648 (2004) ("Plaintiff . . . is adding words to the act that simply are not there."); *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146; 644 NW2d 715 (2002) (judiciary's role includes interpreting statutes, not writing them); *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002).

The first sentence of MCL 691.1417(2) provides that "[a] governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency." The plain and unambiguous language of the statute clearly expresses that if an overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency there is no protection under the doctrine of governmental immunity. The majority's interpretation of the statute effectively adds language to MCL 691.1417(2) that simply does not exist. Under the majority's construction, MCL 691.1417(2), contrary to its plain language, actually means that a governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency *and the claimant satisfies MCL 691.1417(3) and (4)*. Because we are to read nothing into an unambiguous statute and are not permitted to add words to the statute, the majority's interpretation of MCL 691.1417 is inconsistent with the governing principles of statutory construction.

The second sentence of MCL 691.1417(2) provides that "[s]ections 16 to 19 [MCL 691.1416 through MCL 691.1419] abrogate common law exceptions, if any, to immunity for the overflow or backup of a sewage disposal system and provide the sole remedy for obtaining any form of relief for damages or physical injuries caused by a sewage disposal system event regardless of the legal theory." I see nothing in this broad, general language that would allow this Court to find that MCL 691.1417(3) and (4) necessarily relate to the issue of governmental immunity, where such a reading would conflict with the explicit language of the first sentence of MCL 691.1417(2). The second sentence of MCL 691.1417(2) speaks not only of immunity, but also touches on the statutory scheme providing the sole remedy for obtaining damages for sewage overflows and backups. With this in mind, I would find that a fair and reasonable construction of MCL 691.1417(3) and (4) merely ties these provisions to the burden of proof that must be established by a plaintiff seeking damages for a sewage disposal system event, while the first sentence of MCL 691.1417(2) addresses the initial threshold question of immunity and whether a compensable event occurred. Such an interpretation would harmonize the provisions of MCL 691.1417 and avoid conflict, along with giving effect to the statute's plain language, thereby carrying out the Legislature's intent. See *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 159; 627 NW2d 247 (2001) ("We construe an act as a whole to harmonize its provisions and carry out the purpose of the Legislature."); *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998) (if statutes can be construed in a manner that avoids conflict, then that construction should control the analysis).

I recognize that ultimately my dispute with the majority on this issue has little substantive meaning because a plaintiff will need to establish all the requirements of MCL 691.1417(2), (3), and (4) in order to recover, and if the requirements are not established, the governmental agency will not be liable, regardless of whether the agency avoided liability on the basis of governmental immunity or simply on the basis of failure to prove the elements of the cause of action. However, I do believe that we should set forth the correct analytic framework as indicated by the statutory language because the proper framework can have a bearing on a case. For example, a final judgment or order in a civil action is defined, for the purposes of determining whether a governmental defendant has an appeal of right, as "[a]n order denying governmental immunity to a governmental party, including a governmental agency, official, or employee[.]" MCR 7.202(6)(a)(v); see also *Newton v Michigan State Police*, 263 Mich App 251, 257-259; 688 NW2d 94 (2004). Therefore, whether a governmental agency has an appeal as of right from a denial of a motion for summary disposition, versus having to file an application for leave to appeal or await the completion of a trial, can be affected by the legal basis given by the trial court for denying the motion, such as the failure to establish governmental immunity or the existence of a genuine issue of material fact with respect to the elements of the cause of action outside the context of immunity.

Here, there does not appear to be any dispute that the sewage backup or overflow was a "sewage disposal system event" as that language is defined in MCL 691.1416(k),¹ nor is there a dispute that defendant is the "appropriate governmental agency" as defined in MCL 691.1416(b) for the purposes of the lawsuit. Accordingly, defendant was not protected by governmental immunity. Nonetheless, defendant could still avoid liability if plaintiff failed to state a claim or failed to create a genuine issue of material fact relative to the requirements of MCL 691.1417(3) and (4). For the reasons stated by the majority relative to the lack of proof under § 1417(3), I concur that summary disposition for defendant was appropriate.

/s/ William B. Murphy

¹ "'Sewage disposal system event' or 'event' means the overflow or backup of a sewage disposal system onto real property." MCL 691.1416(k). The statute also provides that certain sewage overflows or backups do not constitute sewage disposal system events, but those exceptions are not applicable here.